Vasantha Kumar a/l Krishnan v Saravanan a/l Murugan & Ors

HIGH COURT (IPOH) — ELECTION PETITION NO 26PP-07–06 OF 2013
ABDUL RAHMAN SEBLI J
20 FEBRUARY 2014

Election — Petition — Petition to set aside election — Whether petition fundamentally flawed in several respects rendering same liable to be struck out in limine — Whether petitioner lacked locus standi to present petition — Whether petitioner failed to specifically plead which provision in s 32 or which offence under s 10 of the Election Offences Act 1954 relied upon to set aside election — Whether procedure for service of petition not followed — Whether charge against elected candidate void for ambiguity — Whether charges against returning officer and Election Commission failed to plead how their alleged transgressions or non-compliance with law affected result of election

The instant petition challenged the election of the first respondent as Member of Parliament for Tapah in the 2013 general elections. The petitioner was the opposition party's candidate who had challenged the first respondent for the seat. At the hearing, the respondents raised preliminary objections contending that the petition was fundamentally defective in several respects rendering it null and void and that it ought to be struck out in limine. The second and third respondents were, respectively, the returning officer for the elections in the said constituency and the Election Commission.

Held, striking out the petition and holding that the first respondent was the duly elected candidate:

(1) The petitioner was not a qualified person within the meaning of s 34(a) of the Election Offences Act 1954 ('EOA') and had no locus standi to present the petition. It was insufficient for him to merely plead that he was a registered voter. To qualify as a rightful petitioner, he had to be a person who had voted or had a right to vote at the election 'to which the petition relates'. The petition related to an election in the parliamentary constituency of Tapah in the state of Perak. The petitioner was a registered voter in the parliamentary constituency of Merbok in the state of Kedah. He could not therefore have had a right to vote at the election to which the petition related, ie the Tapah constituency (see para 6).

(2) The paragraph in the petition stating that the petitioner was himself a candidate for the Tapah parliamentary seat did not state the petitioner's right to present the petition under s 34 of the EOA. The making of such a statement was a mandatory requirement under r 4(1)(a) of the Election

Petition Rules 1954 ('EPR'). Failure to comply with that requirement struck at the root of the petition and was fatal. The paragraph in question merely spoke of the parties to the election process and the result of the election. It had nothing to do with a right to present the petition and was irrelevant for purpose of determining whether the petitioner had the necessary locus standi to present the petition (see paras 9–10).

(3) The provisions of r 15(1) relating to the procedure for service of an election petition were mandatory and if not strictly followed rendered the petition defective. Proper service of the petition was condition precedent to the court's jurisdiction to entertain the petition. In the instant case, notice of presentation of the petition was purportedly served personally on the first respondent pursuant to r 15(1)(a) but this was contradicted by the second last paragraph of the notice suggesting service was effected in accordance with r 15(1)(c). Even if the latter was the case, it was fatal that the notice failed to state that a copy of the presentation could be obtained free of charge at the office of the registrar. Rule 15(1) only allowed for one of the three prescribed modes of service under para (a) or (b) or (c) to be employed and not a combination of any of those modes. The two modes adopted by the petitioner made the service ambiguous and confusing thus making it null and void (see paras 12–13).

(4) The petitioner's failure to concisely state the facts and grounds relied upon to sustain the prayer was a breach of r 4(1)(b) read with r 4(4) para (3). The failure to comply with this mandatory requirement rendered the petition fundamentally defective and liable to be struck out in limine. The only charge in the petition against the first respondent (ie failure to comply with election procedures during the campaign period under s 10 of the EOA) was void for ambiguity. The petitioner failed to state which of the nine offences in s 10 of the EOA he was relying upon as a ground to support his allegation of bribery against the first respondent. The defect was fatal warranting an outright striking out (see para 14 & 18).

(5) The petitioner's failure to plead (or the improper pleading of) s 32 of the EOA, invalidated the petition. This was a key provision and the source of the election court's power to declare an election void. It was only on the five grounds in s 32(a) to (e) of the EOA that an election could be declared void by the election court. The grounds were distinct and they had to be pleaded separately. The petitioner had to specify which of the grounds he was relying upon. Paragraphs 31-37 of the petition purportedly set out the details of the alleged acts of bribery by the first respondent but none of those paragraphs referred to s 32 of the EOA. The allegations were vague and the petitioner was undecided which paragraph under s 32 was applicable. This was a fatal flaw as it led to an incomplete cause of action against the respondents (see paras 19–22).

(6) None of the complaints against the second and third respondents contained any reference to s 32 of the EOA and this was fatal. The catch all para 41 in the petition did not plead (or, if pleaded, was insufficient or irrelevant to show) how the alleged transgressions or non-compliance with the law on the part of the second and third respondents had affected the result of the election (see para 19 & 27).

(7) The defects in the pleadings, either taken individually or cumulatively, resulted in a jurisdictional failure (see para 36).

[Bahasa Malaysia summary

Petisyen ini mencabar pemilihan responden pertama sebagai Ahli Parlimen Tapah pada pilihan raya umum 2013. Pempetisyen adalah calon parti pembangkang yang mencabar responden pertama untuk kerusi tersebut. Sewaktu perbicaraan, responden-responden menimbulkan bantahan awalan menghujahkan bahawa petisyen itu adalah secara asasnya cacat dalam beberapa perkara menjadikannya terbatal dan tidak sah dan bahawa ia patut dibatalkan *in limine*. Responden kedua dan ketiga adalah, masing-masing, pegawai pengurus untuk pilihan raya dalam kawasan tersebut dan suruhan jaya pilihan raya.

Diputuskan, membatalkan petisyen dan memutuskan bahawa responden pertama adalah calon yang dipilih sewajarnya:

(1) Pempetisyen bukanlah orang yang berkelayakan dalam maksud s 34(a) Akta Kesalahan Pilihan Raya 1954 (AKPR) dan tidak mempunyai locus standi untuk mengemukakan petisyen tersebut. Ia adalah tidak mencukupi untuk memplidkan bahawa dia adalah pengundi berdaftar. Untuk memenuhi syarat sebagai pempetisyen yang sah, dia hendaklah menjadi seorang yang telah mengundi atau mempunyai hak untuk mengundi di pilihan raya 'to which the petition relates'. Petisyen itu berkaitan dengan pilihan raya di kawasan Parlimen Tapah negeri Perak. Pempetisyen adalah pengundi berdaftar di kawasan Parlimen Merbok di Negeri Kedah. Dia oleh itu tidak boleh mempunyai hak untuk mengundi di pilihan raya tersebut yang mana berkaitan dengan petisyen itu, iaitu kawasan Tapah (lihat perenggan 6).

(2) Perenggan di dalam petisyen menyatakan bahawa pempetisyen sendiri merupakan calon untuk kerusi Parlimen Tapah tidak menyatakan hak pempetisyen untuk mengemukakan petisyen tersebut di bawah s 34 AKPR. Pembuatan kenyataan itu adalah keperluan mandatori di bawah k 4(1)(a) Kaedah-Kaedah Petisyen Pilihan Raya 1954 ('KKPPR'). Kegagalan untuk memenuhi keperluan itu adalah asas kepada petisyen dan adalah fatal. Perenggan yang dipersoalkan hanya menyatakan kepada pihak-pihak kepada proses pilihan raya dan keputusan pilihan raya tersebut. Ia tidak berkaitan dengan hak untuk mengemukakan petisyen

dan adalah tidak relevan bagi tujuan untuk menentukan sama ada pempetisyen mempunyai *locus standi* yang tertentu untuk mengemukakan petisyen (lihat perenggan 9–10).

(3) Proviso k 15(1) berkaitan dengan prosedur penyerahan pilihan raya adalah mandatori dan jika tidak diiku dengan ketat menjadikan pilihan raya itu cacat. Penyerahan yang wajar terhadap petisyen adalah syarat terdahulu untuk bidang kuasa mahkamah untuk melayan petisyen itu. Dalam kes ini, notis penyerahan dikatakan dikemukakan secara kediri atas responden pertama menurut k 15(1)(a) tetapi ini adalah bercanggah dengan perenggan kedua terakhir notis tersebut yang mencadangkan penyerahan telah dilaksanakan menurut k 15(1)(c). Walaupun jika yang kemudian adalah kes tersebut, ia adalah fatal bahawa notis itu gagal untuk menyatakan bahawa satu salinan penyerahan boleh didapati secara percuma di pejabat pendaftar. Kaedah 15(1) hanya membenarkan untuk satu daripada tiga penyerahan yang ditetapkan di bawah perenggan (a) atau (b) atau (c) untuk digunakan dan bukan kombinasi daripada tersebut. Kedua-dua yang diguna pakai oleh pempetisyen menjadikan penyerahan itu samar-samar dan mengelirukan sekali gus menjadikannya terbatal dan tidak sah (lihat perenggan 12–13).

(4) Kegagalan pempetisyen untuk menyatakan dengan ringkas dan padat fakta-fakta dan alasan-alasan digunakan untuk mengekalkan permohonan merupakan pelanggaran k 4(1)(b) dibaca bersama k 4(4) perenggan (3). Kegagalan untuk mengikuti keperluan mandatori menjadikan petisyen itu cacat secara asasnya dan bertanggungan untuk dibatalkan *in limine*. Satu-satunya dakwaan dalam petisyen terhadap responden pertama (iaitu kegagalan untuk mengikuti prosedur pilihan raya sewaktu tempoh kempen di bawah s 10 AKPR) adalah tidak sah disebabkan oleh kesamaran. Pempetisyen gagal untuk menyatakan mana antara sembilan kesalahan di dalam s 10 AKPR yang digunakannya sebagai menyokong dakwaan rasuahnya terhadap responden pertama. Kecacatan itu adalah fatal dan membenarkan pembatalan yang jelas (lihat perenggan 14 & 18).

(5) Kegagalan pempetisyen untuk memplidkan (atau pliding tidak wajar) s 32 AKPR, membatalkan petisyen. Ini merupakan kunci proviso dan sumber mahkamah pilihan raya untuk mengisytiharkan pilihan raya tidak sah. Ia hanya lima alasan dalam s 32(a) hingga (e) AKPR bahawa suatu pilihan raya boleh diisytiharkan tidak sah oleh Mahkamah Pilihan Raya. Alasan-alasan itu adalah berbeza dan hendaklah diplidkan secara berasingan. Pempetisyen perlu menjelaskan alasan yang mana yang digunakannya. Perenggan 31–37 petisyen itu dikatakan menyatakan butir-butir tindakan rasuah yang didakwa dilakukan oleh responden pertama tetapi tiada satu pun perenggan merujuk kepada s 32 AKPR. Dakwaan adalah tidak jelas dan pempetisyen tidak dapat memutuskan

perenggan yang mana di bawah s 32 boleh diguna pakai. Ini adalah kesalahan fatal kerana ia menjurus kepada ketidaksempurnaan kausa tindakan terhadap responden-responden (lihat perenggan 19–22).

(6) Tiada satu pun aduan terhadap responden kedua dan ketiga mempunyai apa-apa rujukan kepada s 32 AKPR dan ini adalah fatal. Kesemua perenggan 41 di dalam petisyen tidak diplid (atau, jika diplidkan, adalah tidak mencukupi atau tidak relevan untuk ditunjukkan) bagaimana pelanggaran yang dikatakan itu atau tidak mematuhi undang-undang di bahagian responden kedua dan ketiga telah menjejaskan keputusan pilihan raya (lihat perenggan 19 & 27).

(7) Kecacatan dalam pliding-pliding, sama ada diambil secara individu atau kumulatif, menyebabkan kegagalan bidang kuasa (lihat perenggan 36).]

Notes

For cases on petition to set aside election, see 6 *Mallal's Digest* (4th Ed, 2014 Reissue) paras 2230–2232.

Cases referred to

Ahdah Sulaiman v Saddi Abdu Rahman [2008] 9 CLJ 513, HC (folld)
Ahmad Jamaluddin bin Abdul Majid v Rafidah bt Aziz & Ors [2009] 2 MLJ 646, FC (refd)
Ahmad Ramzi bin Mohamad Zubir v Hj Abdul Hadi bin Awang & Ors [2009] 4 MLJ 867, HC (refd)
Chong Thain Vun v Watson & Anor; Hamid Datun v Majanggil & Anor; Richard Eyap v Tun Datu Mustapha bin Datu Harun [1968] 1 MLJ 65 (refd)
Dato' Ismail bin Kamus v Pegawai Pengurus Pilihan Raya Zainal bin Abidin Azim & Ors [2005] 3 MLJ 193; [2005] 2 CLJ 237, FC (refd)
Devan Nair v Yong Kuan Teik [1967] 1 MLJ 261, PC (refd)
Dr Lee Chong Meng v Abdul Rahman bin Hj Abdullah Returning Officers & Ors [2000] 6 MLJ 98; [2000] 3 CLJ 532, FC (refd)
Dr Shafie bin Abu Bakar v Pegawai Pengurus Pilihan Raya N 26 Bangi-Mohd Zakri bin Hj Hussin & Ors and Other Petitions (No 2) [2005] 2 MLJ 149, HC (refd)
Gan Joon Zin v Fong Kui Lun & Ors [2004] 4 CLJ 729, FC (refd)
Hardwari Lal v Kanwal Singh AIR 1972 Vol 59, SC (refd)
Harish Chandra Bajpai v Triloki Singh AIR 1957 SC 444, SC (refd)
Hugh Siak Meng & Anor v Dang Ibrahim [1975] 4 MC 275 (refd)
Isahak Hamid v Mustapha [1965] 2 MLJ 18 (refd)
Mahari bin Endut v Dato' Hj Mat Razali bin Kassim & Ors [2009] 5 MLJ 153; [2009] 4 CLJ 488, FC (folld)
Muhamad Sanusi bin Md Nor lwn Mohd bin Tajuddin [2009] 8 MLJ 131; [2008] 9 CLJ 275, FC (refd)
Muhammad Sanusi bin Md Nor lwn Mohd Tajuddin bin Abdullah dan lain-lain [2009] MLJU 570; [2009] 1 CLJ 1, HC (refd)

Patau Rubis v Patrick Uren & Anor [1984] 2 CLJ (Rep) 345, HC (refd)
Tan Sri Joseph Kurup v Danny Anthony Andipai & Anor [2009] 3 MLJ 1; [2009] 3 CLJ 523, FC (refd)
Ustaz Akmal bin Hj Kamaruddin v Dato' Mohamad Daud bin Mohd Yusoff & Anor [2014] 9 MLJ 841; [2013] 9 CLJ 924 (refd)
Wan Sagar bin Wan Embong v Harun bin Taib [2008] 6 MLJ 473, FC (refd)

Legislation referred to

Elections (Conduct of Elections) Regulations 1981 regs 14A, 19(3), (4), (8), (13), 19A(1)(c), 25(12)(b)(ii), 25C , 27A, 27B, 27C, Forms 13, 14
Election Offences Act 1954 ss 3(1), 4(g), 7, 10, 32, 32(b), 34, 34(a)(c), 36(1)(a)
Election Petition Rules 1954 r 4(1)(a), r 4(4), r 15(1)(a)

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Firoz Hussein Ahmad Jamaluddin (Syed Faisal Syed Abdullah, Abu Bakar As Sidek bin Mohd Sidik, Mohd Hasnal Abdul Aziz, Badrul Hishah Abd Wahap and Mohd Hasnal bin Abdul Aziz with him) (Senior Federal Counsel, Attorney General's Chambers) for the first respondent
Alice Loke Yee Ching (Khairul Nizam Abu Bakar and Farahana bt Rabidin with her) (Senior Federal Counsel, Attorney General's Chambers) for the second respondent.
Saohi Menon (B Muralidharan and V Premshangar with him) (Watching brief for Barisan Nasional)

Abdul Rahman Sebli J:

COURT

[1] This petition relates to the general election that was held on 5 May 2013 in the parliamentary constituency of P 072 Tapah in the State of Perak Darul Ridzuan where the first respondent was returned as the winning candidate. Having gone through the arguments of all four parties carefully I am inclined to agree with the respondents that the petition is defective and ought to be struck out in limine. There are fundamental defects in the petition which renders it null and void. It is trite principle that an Election Court has no jurisdiction to try a petition that does not comply with any election law see *Tan Sri Joseph Kurup v Danny Anthony Andipai & Anor* [2009] 3 MLJ 1; [2009] 3 CLJ 523 (FC). The jurisdiction that is conferred on an Election Court is a peculiar jurisdiction: *Hugh Siak Meng & Anor v Dang Ibrahim* [1975] 4 MC 275. In exercising this special jurisdiction, there is no place for consideration of equity or common law and the court has inherent power to dismiss or strike out petitions which are defective: see *Devan Nair v Yong Kuan Teik* [1967] 1 MLJ 261.

[2] In *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729 the apex court held that an election petition can be struck out without proceeding to trial by way of preliminary objections or by notice of motion. At the outset of the proceeding Mr Hariharan for the petitioner contended that the respondents' preliminary objections should not be entertained as counsel failed to abide by the Malaysian Bar's resolution that requires four clear days written notice before any preliminary objection can be raised. With due respect the resolution has no binding effect on this court. A jurisdictional objection can be taken at any time and without prior written notice. In any event a petition that is null and void for failure of jurisdiction must be struck out with or without objection.

[3] Learned counsel for the petitioner further contended that the respondents are barred by the doctrine of res judicata from raising any preliminary objection at this proceeding as their objections had already been disposed of at the earlier hearing of this petition or, alternatively, that since they were not raised at the earlier hearing the respondents have thus forfeited that right. I find no merit in the argument as the preliminary objections that the respondents are now raising had neither been argued nor decided by this court at the earlier hearing. At that hearing the petition was struck out on the sole ground that it was not properly filed, which the Federal Court on appeal ruled to be erroneous. Likewise and for the same reason the question of waiver or estoppel does not arise.

LOCUS STANDI

[4] The right to present an election petition is a statutory right conferred by s 34 of the Election Offences Act 1954 ('the EOA'). It is not a right that is given to any Tom Dick and Harry but a right given to the following persons only and to no others:

(a) some person who voted or had a right to vote at the election to which the petition relates.

(b) some person claiming to have had a right to be returned or elected at such election; or

(c) some person alleging himself to have been a candidate at such election.

[5] Does the petitioner fall under any of the category of persons specified above? In my view he does not. His claim to locus standi is pleaded in para 1 of the petition as follows:

> Pempetisyen yang bernama di atas, Vasantha Kumar A/L Krishnan dengan hormatnya mengatakan bahawa dia ialah *seorang pengundi berdaftar*, dan dengan itu menurut Seksyen 34 Akta Kesalahan Pilihan Raya 1954, mempunyai hak untuk memfailkan petisyen ini. (Emphasis added.)

[6] The petitioner is obviously relying without citing on para (a) of s 34 but under this paragraph it is not sufficient for him to merely plead that he is a registered voter ('seorang pengundi berdaftar'). To qualify as a rightful petitioner he must be a person who had voted or had a right to vote at the election 'to which the petition relates'. This present petition relates to an election in the parliamentary constituency of Tapah in the State of Perak. The petitioner is a registered voter but not in the parliamentary constituency of Tapah. The document at p 70 of encl 60 shows that he is a registered voter in the parliamentary constituency of Merbok in the State of Kedah. He could not therefore have a right to vote at the election to which the petition relates, ie the Tapah constituency. Consequently he is not a qualified person within the meaning of s 34(a) of the EOA. As such he had no locus standi to present this petition against any of the respondents. The petition ought to be struck out on this ground alone.

[7] Learned counsel for the petitioner argued that being a candidate himself at the election the petitioner qualifies under para (c) of s 34. This according to counsel is covered by para 2 of the petition, the material portion of which reads as follows:

> Pempetisyen yang bernama di atas dengan hormatnya mengatakan bahawa dalam pilihan raya lepas yang dijalankan pada 5 haribulan Mei 2013 dimana pempetisyen dan Responden Pertama yang dinamakan di atas masing-masing mewakili Parti Keadilan Rakyat ('PKR') dan Barisan Nasional telah bertanding sebagai calon-calon di Kerusi Parlimen Tapah (P072). Pegawai Pengurus bagi bahagian pilihan raya Parlimen itu, Encik Hj Razali Bin Bakar (Responden Kedua) yang bertindak untuk dan bagi pihak Suruhanjaya Pilihan Raya Malaysia (Responden Ketiga) ('SPR') telah mengistiharkan dan melaporpilih Responden Pertama yang dinamakan di atas sebagai telah dipilih dalam bahagian pilihan raya Tapah (P072). Keputusan Pilihan Raya tersebut telah diwartakan pada 22 Mei 2013 melalui Warta Kerajaan Persekutuan P.U (13) 212 seperti berikut: ...

[8] What counsel is urging upon the court is to read s 34(c) of the EOA into para 2 the petition. I am unable to accede to that proposition. The strict requirements of election law does not allow for such latitude. To establish locus standi a petitioner must not only invoke s 34 of the EOA but must also specify under which paragraph of that provision is he relying on. This is to enable the respondent to effectively meet the petitioner's claim on locus standi.

[9] It is to be noted that unlike para 1, para 2 of the petition does not contain a statement that the petitioner had a right to present the petition, which is a mandatory requirement under r 4(1)(a) of the Election Petition Rules 1954 ('the Rules'). This rule provides as follows:

> 4(1) An election petition shall contain the following statements:

(a) it shall state the right of the petitioner to petition within section 34 of the Act;

[10] Any failure to comply with this requirement strikes at the root of the petition and is fatal. Further, para 2 merely speaks of the parties to the election process and the result of the election. It has nothing to do with a right to present the petition and is irrelevant for purposes of determining whether the petitioner had the necessary locus standi to present the petition. The petitioner's reliance on para 2 of the petition to establish locus standi must therefore fail.

FAILURE TO COMPLY WITH R 15(1)(a)

[11] Rule 15(1) of the Rules regulates the procedure for service of an election petition and is couched in the following terms:

15(1) Notice of the presentation of a petition, accompanied by a copy of the petition, shall, within fifteen days of the presentation of the petition, be served by the petitioner:

(a) on the respondent personally which shall be effected by delivering the notice and a copy of the petition to the respondent;

(b) by sending the notice and a copy of the petition by pre-paid registered post addressed to the respondent at his usual or last known place of residence or business; or

(c) by posting a notice on the notice board of the High Court in the State in which that constituency or electoral ward is situated and by publishing a notice in a national language newspaper and in any other newspaper circulating within the constituency or electoral ward in which the election was held stating that such petition has been presented and that a copy of the notice of presentation of the petition and a copy of the petition may be obtained by the respondent free of charge on application at the office of the Registrar.

[12] Proper service of the petition is a condition precedent to the jurisdiction of the court: *Chong Thain Vun v Watson & Anor; Hamid Datun v Majanggil & Anor; Richard Eyap v Tun Datu Mustapha bin Datu Harun* [1968] 1 MLJ 65. The provisions relating to the mode and manner of service as stipulated by the Rules are mandatory and must be strictly adhered to failing which the petition will be rendered defective: *Dr Lee Chong Meng v Abdul Rahman bin Hj Abdullah Returning Officers & Ors* [2000] 6 MLJ 98; [2000] 3 CLJ 532 (FC); *Muhammad Sanusi bin Md Nor lwn Mohd Tajuddin bin Abdullah dan lain-lain* [2009] MLJU 570; [2009] 1 CLJ 1 (FC). A defective petition is no petition at all and the court has no power to entertain such petition.

[13] The notice of the presentation of petition in the instant case was

purportedly served on the first respondent personally on 25 June 2013 pursuant to r 15(1)(a) of the Rules but this is contradicted by the second last paragraph of the notice dated 12 June 2013 which suggests that service was effected in accordance with para (c) of r 15(1). Even if it was service pursuant to para (c) the notice failed to state that a copy of the presentation may be obtained free of charge at the office of the registrar. This failure has been held to be fatal in *Ahdah Sulaiman v Saddi Abdu Rahman* [2008] 9 CLJ 513. Further, r 15(1) only allows for one of three prescribed modes of service, ie either under para (a) or (b) or (c) and not any combination of these modes. The two modes adopted by the petitioner makes the service ambiguous and confusing, thus making it null and void: *Muhamad Sanusi bin Md Nor lwn Mohd bin Tajuddin* [2009] 8 MLJ 131; [2008] 9 CLJ 275 (HC).

FAILURE TO COMPLY WITH R 4(1)(b) AND R 4(4)

[14] The petitioner has also failed to comply with r 4(1)(b) read with r 4(4) para (3) of the Rules in that he failed to concisely state the facts and grounds relied on to sustain the prayer. This is a mandatory requirement and the petitioner's failure comply with the requirement renders the petition fundamentally defective and liable to be struck out in limine: see *Mahari bin Endut v Dato' Hj Mat Razali bin Kassim & Ors* [2009] 5 MLJ 153; [2009] 4 CLJ 488 (FC). In that case the Federal Court laid down the broad principle that election petitions are subject to strict interpretation of the election law although it may appear to be harsh.

[15] The rationale for pleading material facts was explained by the Federal Court in *Wan Sagar bin Wan Embong v Harun bin Taib* [2008] 6 MLJ 473 at p 485 as follows:

> The function of particulars is to present a full picture of the cause of action in order to make the opposite party understand the case he will have to meet.

[16] Material facts are facts which if established would give the petitioner the relief asked for: see the judgment of Ray J in *Hardwari Lal v Kanwal Singh* AIR 1972 Vol 59 SC and adopted by the Kuching Election Court in *Patau Rubis v Patrick Uren & Anor* [1984] 2 CLJ (Rep) 345. In *Ahmad Ramzi bin Mohamad Zubir v Hj Abdul Hadi bin Awang & Ors* [2009] 4 MLJ 867 the Terengganu Election Court held as follows:

> A petitioner is obliged to plead in the petition itself such material facts with such particulars where necessary to show on the face of the petition that he has a cause to complain under one of the five provisions of the Election Offences Act 1954 before his petition can be examined on the merit for a full hearing.

[17] It has been held that an omission to state a single material fact leads to an incomplete cause of action and renders the petition defective: see *Dr Shafie*

bin Abu Bakar v Pegawai Pengurus Pilihan Raya N 26 Bangi-Mohd Zakri bin Hj Hussin & Ors and Other Petitions (No 2) [2005] 2 MLJ 149. Dato' Firoz Hussein for the first respondent correctly pointed out, and this is conceded by Mr Hariharan, that except for the seventh charge at p 38 of the petition, none of the charges concern the first respondent. They are directed at the second and third respondents and it has not been pleaded how these alleged transgressions by the second and third respondents even if true could affect the election of the first respondent. Thus as against the first respondent the only charge of relevance is the seventh charge which reads as follows:

> KEGAGALAN UNTUK MEMATUHI PROSEDUR PILIHANRAYA SEMASA WAKTU BERKEMPEN Dl BAWAH SEKSYEN 10 AKTA KESALAHAN PILIHAN RAYA 1954.

[18] I must say at the outset that the charge is void for ambiguity. There are nine distinct offences of bribery under s 10 of the EOA and the petitioner failed to specify which of the nine offences of bribery is he relying on as a ground to support his allegation of bribery against the first respondent. Without specifying the offence the petitioner is in fact asking the first respondent to guess what exactly is the allegation of bribery that the petitioner is leveling against him. The defect is fatal, warranting an outright striking out.

[19] There is yet another fatal flaw in the petition. It makes no reference to s 32 of the EOA except in para 41 which I shall deal with shortly. This is a key provision and the source of the Election Court's power to declare an election void. Failure to plead this provision or to plead it improperly invalidates the petition. It provides as follows:

> 32 The election of candidate at any election shall be declared to be void on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:
>
> (a) that general bribery, general treating or general intimidation have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;
>
> (b) non-compliance with the provisions of any written law relating to the conduct of any election if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election;
>
> (c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate;
>
> (d) that the candidate personally engaged a person as his election agent, or as a canvasser or agent, knowing that such person had within seven years previous to such engagement been convicted or found guilty of a corrupt practice by a Sessions Court, or by the report of an Election Judge; or

(e) that the candidate was at the time of his election a person disqualified for election.

[20] It is only on these five grounds that an election can be declared void by the Election Court. They are distinct grounds and must be pleaded separately. It behooves the petitioner therefore to specify under which paragraph of s 32 is he basing his complaint or complaints on. Failure to do so will leave the petition hanging in mid air with no leg to stand on. Paragraphs 31–37 of the petition purportedly set out the details of the alleged acts of bribery practiced by the first respondent but in none of these paragraphs is there any reference to s 32 of the EOA. By their nature these allegations fall under para (c) of s 32 but even then the allegations are vague, bearing in mind the charges are quasi criminal in nature and as such must be set out with exactitude and precision: *Harish Chandra Bajpai v Triloki Singh* AIR 1957 SC 444. The petitioner did not even plead that the bribes were given to registered voters and if so whether they had voted the first respondent in return for the bribes. All of the charges contain vague operative words as can be seen from two examples below:

31 Pempetisyen kamu menyatakan bahawa perbuatan rasuah dibawah Seksyen 10 Akta Kesalahan Pilihan Raya 1954 telah dilakukan oleh ejen-ejen *dan atau* pengkhidmat-pengkhidmat Responden Pertama dengan pengetahuan dan persetujuan Responden Pertama *dan atau* ejennya.

35 Responden Pertama *atau* ejen-ejennya *dan/atau* pekerja-pekerjanya dan/atau pengkhidmat-pengkhidmatnya menawarkan Kupon dan meminta pengundi-pengundi memenangkan Barisan Nasional. (Emphasis added.)

[21] The use of the words 'ejen-ejennya dan/atau pekerja-pekerjanya dan/atau pengkhidmat-pengkhidmatnya' is a manifestation of the petitioner's self doubt as to who actually committed the acts of bribery as alleged. More seriously the petitioner is not even sure under which paragraph of s 32 is he relying on, as can be seen from the catch-all para 41 of the petition where he pleaded:

41 Justeru itu, Pempetisyen kamu menyatakan bahawa telah berlaku ketidakpatuhan peruntukan undang-undang yang menyentuh keputusan Pilihan Raya tersebut dan seterusnya menjadi asas bagi Hakim Pilihan Raya untuk mengisytiharkan bahawa pemilihan Responden pertama sepatutnya telah tidak dilapor pilih oleh Responden Kedua *selaras dengan seksyen 32(b) dan/atau 32(c) Akta Kesalahan Pilihan Raya 1954*, mengikut kesesuaiannya. (Emphasis added.)

[22] The ambiguity is plain and obvious. The use of the words 'dan/atau' clearly shows that the petitioner is undecided if the alleged transgression by the first respondent falls under para (b) or para (c) or both paras (b) and (c) of s 32 and by using the words 'mengikut kesesuaiannya' (whichever is applicable) in

the last sentence he is in fact inviting the court to make a guess as to which paragraph the alleged transgression by the first respondent would fall under. This is a fatal flaw as it leads to an incomplete cause of action against all three respondents.

CASE AGAINST THE SECOND AND THIRD RESPONDENTS

[23] There are seven complaints against the second and third respondents and they are divided into the following heads:

(1) failure to comply with the election procedures for postal voting under reg 25C of the Elections (Conduct of Elections) Regulations 1981 ('the ECER');

(2) failure to comply with the election procedures for advance voting under regs 27A, 27B and 27C of the ECER;

(3) failure to comply with election procedures after counting of votes under reg 25(12)(b)(ii) of the ECER in relation to Form 14;

(4) failure to comply with election procedures after counting of votes under reg 25(12)(b)(ii) of the 1981 ECER in relation to Form 13;

(5) that a presiding officer held a position in a political party contesting in the election;

(6) fraud committed by the second and third respondents towards voters in the parliamentary constituency of Tapah had dishonestly and intentionally caused failure in the use of indelible ink which ought to have provided safeguards against cheating during the voting process; and

(7) failure to comply with election procedures during the campaign period under s 10 of the EOA.

[24] Grounds (1)–(6) relate to non-compliance with the provisions of the law relating to the conduct of an election, an obvious reference to s 32(b) of the EOA without citing the provision. Ground (7) does not concern the second and third respondents as it is directed at the first respondent and has been dealt with earlier in this judgment. The allegation is therefore irrelevant as far as the second and third respondents are concerned and must be disregarded. As is the case against the first respondent, none of the complaints against the second and third respondents contain any reference to s 32 of the EOA. On the authority of *Tan Sri Joseph Kurup* this must be held to be fatal.

[25] It is true that para 41 of the petition does make a reference to s 32 of the EOA but the question is whether this fleeting reference to the provision is sufficient fulfillment of the mandatory requirement that concise facts and

grounds relied on to sustain the prayer must be stated with clarity. For context para 41 of the petition is reproduced again:

> 41 Justeru itu, Pempetisyen kamu menyatakan bahawa telah berlaku ketidakpatuhan peruntukan undang-undang yang menyentuh keputusan Pilihan Raya tersebut dan seterusnya menjadi asas bagi Hakim Pilihan Raya untuk mengisytiharkan bahawa pemilihan Responden pertama sepatutnya telah tidak dilapor pilih oleh Responden Kedua selaras dengan seksyen 32(b) dan/atau 32(c) Akta Kesalahan Pilihan Raya 1954, mengikut kesesuaiannya.

[26] What the petitioner had done in effect was to lump together all the allegations in the preceding paragraphs of the petition and then plead in para 41 that all those allegations are to support a ground under s 32(b) of the EOA. This is clearly wrong. It is like casting the net wide enough in the hope that perchance some of the allegations might get entangled in the net. This is contrary to what is required by r 4(1)(b) read with r 4(4) para (3) of the Rules.

[27] Even assuming that the grounds have been properly pleaded and that the petitioner is relying on all or any of the grounds under s 32 of the EOA, the petitioner has not fulfilled the precondition that the transgressions or non-compliance with the relevant written laws by the second and third respondents affected the result of the election. These twin requirements must be met without fail: *Ahmad Jamaluddin bin Abdul Majid v Rafidah bt Aziz & Ors* [2009] 2 MLJ 646 (FC); *Gan Joon Zin*; *Dato' Ismail bin Kamus v Pegawai Pengurus Pilihanraya Zainal bin Abidin Azim & Ors* [2005] 3 MLJ 193; [2005] 2 CLJ 237 (FC). In fulfilling this requirement the petitioner must provide facts and grounds to show that the non-compliance with the law affected the result of the election: *Wan Sagar Wan Embong*. It is futile for the petitioner to give a long list of transgressions or non-compliance with the law if otherwise he failed to plead how the transgressions or non-compliance with the law affected the result of the election.

[28] Result of the election means the success of one candidate over the other: see the judgment of Ismail Khan J in *Isahak Hamid v Mustapha* [1965] 2 MLJ 18 which was endorsed by the Federal Court in *Dato' Ismail bin Kamus*. Thus, to invoke the court's jurisdiction under s 32 of the EOA it must be pleaded that such transgression or non-compliance with the law had resulted in the wrong candidate being returned as the winner. Paragraph 41 of the petition does not meet that requirement.

[29] Other than the need to cite the particular limb of s 32 of the EOA the facts alleged must also relate to the particular provisions of the written laws alleged to have been transgressed. In this respect the petitioner again failed in his pleadings. The facts pleaded are either insufficient or are irrelevant to show that the non-compliance or transgressions of the law by the second and third

respondents affected the result of the election. One glaring example is the petitioner's allegation that the second and third respondents, in contravention of reg 14A of the ECER failed to supply the electoral roll for postal voting which consists of electoral roll for postal voting of the police, armed forces, media and Election Commission officials. This allegation is wholly misconceived as reg 14A of the ECER does not impose a duty on the second and third respondents to supply the candidate or his agent with the electoral roll.

[30] Thus the question of contravention of the law by the second and third respondents does not arise at all. As there was no transgression of the law there is no question of any act on the part of the second and third respondents having affected the result of the election. There is no nexus between facts and the law alleged to have been transgressed. Regulation 14A of the ECER is reproduced below to show the fallacy of the petitioner's argument:

> The electoral rolls which are submitted to the candidates on the day of nomination shall be the authoritative texts of the electoral rolls which will be used by the returning officer and the presiding officer of a polling station on polling day.

[31] Perhaps another example will illustrate the point further. The petitioner in para A p 4 of the petition alleged that the second and third respondents contravened reg 27B of the ECER in failing to ensure the safe custody of the advance ballot papers kept at the Tapah police station lock up. The allegation as pleaded is that on 2 May 2013 at approximately 11.30am the third respondent and the staff of the district council took the advance ballot boxes out from the Tapah police station lock up and placed them in a district council lorry. When the petitioner's agents, who were at the police station to oversee the advance voting process asked the third respondent's staff where they were taking the ballot boxes to the staff refused to answer. This refusal to answer is the alleged contravention of the law. Regulation 27B of the ECER provides as follows:

> 27B The ballot box containing the advance ballot papers on the conclusion of the advance voting shall be kept in the safe custody of the returning officer of the constituency in which the election is contested or in accordance with the arrangement approved by the Election Commission until the counting of votes of advance voters on the polling day.

[32] There is nothing in the above provision that imposes an obligation on the second and third respondents to inform the petitioner or his agents where the ballot boxes were to be kept or where they were to be taken to. The petitioner is in fact inviting the court to speculate on what the second and third respondents had done with the ballot boxes after they were taken out from the Tapah police station lock up or worse, to infer without basis that the second and third respondents had tempered with the ballot boxes. As I said in *Ustaz Akmal bin Hj Kamaruddin v Dato' Mohamad Daud bin Mohd Yusoff &*

Anor [2014] 9 MLJ 841; [2013] 9 CLJ 924 suspicion, speculation, perception and the like have no place in a court of law. The allegation is again clearly misconceived and totally unrelated to any transgression of the law by the second and third respondents.

[33] In para 25 of the petition the petitioner pleaded that the third respondent had practiced deception by widespread manipulation of the indelible ink and this had affected him. The allegation is that the third respondent mischievously and in bad faith allowed the use of indelible ink that had been diluted so that it could be washed off and the voters who had voted could then vote again. To get a clearer picture of what the allegation is all about para 25 is reproduced below:

> 25 Pempetisyen menegaskan bahawa Responden Ketiga telah secara sengaja dan berniat jahat merancang, merekayasa, melaksanakan dan mengamalkan penipuan secara besar-besaran kepada pengundi-pengundi berdaftar di Malaysia dengan sengaja membenarkan penggunaan dakwat kekal yang dicairkan dengan tujuan supaya ianya boleh dibersihkan bagi membantu dan memudahkan pengundian berganda dan telah berbuat demikian, yang mana menjejaskan Pempetisyen.

[34] According to the petitioner this act constitutes offences under s 3(1), s 4(g) and s 7 of the EOA as well as breaches of regs 19(3), (4), (8), (13) and 19A(1)(c) of the ECER. But the court is not concerned with the effect of such breaches on the petitioner personally. The Election Court will only intervene if the transgression of the election law affected the result of the election. In the present case save for pleading that he was affected ('menjejaskan pempetisyen') by the third respondent's alleged manipulation of the indelible ink, the petitioner failed to state in what way the dilution of the indelible ink had resulted in the wrong candidate being returned.

[35] In any case the petitioner failed to name even a single person who voted more than once after washing off the indelible ink or if at all there was such a person and if so whether he was a registered voter. It is clear that the allegation in para 25 of the petition that voters throughout Malaysia had voted twice ('pengundian berganda') due to the dilution of the indelible ink is pure conjecture and must be rejected.

[36] In the upshot the defects in the pleadings, either taken individually or cumulatively must result in a jurisdictional failure. In the circumstances and for reasons aforesaid, the petition is struck out with costs. Pursuant to s 36(1)(a) of the EOA I hold that the first respondent Saravanan a/l Murugan had been duly returned.

Petition struck out and first respondent was held as the duly elected candidate.

Reported by Ashok Kumar